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16 *Attorneys for Certain Plaintiffs and on Behalf of All Track*
17 *2 Plaintiffs*

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN FRANCISCO DIVISION

21 IN RE: TFT-LCD (FLAT PANEL)
22 ANTITRUST LITIGATION

CASE NO. M:07-md-01827-SI

MDL NO. 1827

23 This Document Relates to:

24 *SB Liquidation Trust v. AU Optronics Corp.,*
25 *et al.*, 3:10-cv-05458-SI

26 *MetroPCS Wireless, Inc. v. AU Optronics*
27 *Corp., et al.*, 3:11-cv-00829-SI

28 *Office Depot, Inc. v. AU Optronics Corp., et*
al., 3:11-cv-02225-SI

Jaco Electronics, Inc. v. AU Optronics Corp.,
et al., 3:11-cv-02495-SI

CASE NOS. 3:10-cv-05458-SI;
3:11-cv-0829-SI; 3:11-cv-02225-SI;
3:11-cv-02495-SI; 3:11-cv-03763-SI;
3:11-cv-03856-SI; 3:11-cv-04119-SI;
3:11-cv-05765-SI; 3:11-cv-05781-SI;
3:11-cv-06241-SI 3:12-cv-01426-SI;
3:10-cv-05625-SI; 3:10-CV-03205 SI

**STIPULATION AND [PROPOSED]
ORDER REGARDING SUMMARY
JUDGMENT SCHEDULE**

1 *Interbond Corp. of America v. AU Optronics*
2 *Corp., et al.*, 3:11-cv-03763-SI
3 *Schultze Agency Services, LLC, on behalf of*
4 *Tweeter Opco, LLC and Tweeter Newco, LLC,*
5 *v. AU Optronics Corp., et al.*,
6 3:11-cv-03856-SI
7 *P.C. Richard & Son Long Island Corp., et al.*
8 *v. AU Optronics Corp., et al.*, 3:11-cv-04119-
9 SI
10 *Tech Data Corp., et al. v. AU Optronics Corp.,*
11 *et al.*, 3:11-cv-05765-SI
12 *The AASI Creditor Liquidating Trust, by and*
13 *through Kenneth A. Welt, Liquidating Trustee*
14 *v. AU Optronics Corp., et al.*, 3:11-cv-05781-
15 SI
16 *CompuCom Systems, Inc. v. AU Optronics*
17 *Corp., et al.*, 3:11-cv-06241-SI
18 *NECO Alliance LLC v. AU Optronics Corp., et*
19 *al.*, 3:12-cv-01426-SI
20 *Alfred H. Siegel, as Trustee of the Circuit City*
21 *Stores, Inc. Liquidating Trust v. AU Optronics*
22 *Corp., et al.*, 3:10-cv-05625-SI
23 *Tracfone Wireless, Inc. v. AU Optronics*
24 *Corporation, et al.*, 3:10-cv-03205 SI

25 Plaintiffs in the above-captioned cases, which exclude the *State of Oregon* case and the
26 *Hewlett-Packard* case (collectively, “Track 2 Cases”) and Defendants in the Track 2 Cases
27 (collectively, the “Parties”) hereby stipulate as follows:

28 WHEREAS the Parties have met and conferred regarding the Proposed List of Summary
Judgment Motions and Schedule;

WHEREAS the Parties continue to negotiate stipulations that, if executed, would result in
resolving or limiting some of the summary judgment motions listed below;

WHEREAS the Parties have agreed to set a schedule for certain summary judgment
motions; and

1 WHEREAS the Parties have also met and conferred regarding a schedule for *Daubert*
2 motions;

3 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED between the
4 Parties, and subject to the availability and concurrence of the Court, that the Track 2 cases will
5 adopt the following schedule for summary judgment motions in Track 2:

Phase 1	Date
Last day to file Phase 1 dispositive motions	March 18, 2014
Last day to file oppositions to Phase 1 dispositive motions	April 29, 2014
Last day to file reply briefs in support of Phase 1 dispositive motions	June 10, 2014
Hearing on Phase 1 dispositive motions	June 27, 2014
Phase 2	
Last day to file Phase 2 dispositive motions	May 1, 2014
Last day to file oppositions to Phase 2 dispositive motions	June 12, 2014
Last day to file reply briefs in support of Phase 2 dispositive motions	July 24, 2014
Hearing on Phase 2 dispositive motions	August 8, 2014
Phase 3	
Last day to file Phase 3 dispositive motions	June 2, 2014
Last day to file oppositions to Phase 3 dispositive motions	July 14, 2014
Last day to file reply briefs in support of Phase 3 dispositive motions	August 25, 2014
Hearing on Phase 3 dispositive motions	September 12, 2014

22 IT IS FURTHER STIPULATED among the Parties, and subject to the concurrence of the
23 Court, that the following summary judgment topics identified by the Defendants will be in Phase
24 1:

- 25 1. Certain of Plaintiffs' state-law claims should be dismissed on choice of law and/or due
26 process grounds.
- 27 2. Plaintiffs seek damages based on purchases of LCD Products containing LCD Panels
28 that were not manufactured by Defendants or alleged co-conspirators.

1 3. Plaintiffs' claims and alleged damages relating to "lost sales" are barred because
2 Plaintiffs have failed to provide evidence from which they could establish damages
3 based on "lost sales."

4 4. Plaintiffs cannot recover from purported conspirators or for claims based on sales by
5 purported conspirators they did not identify in relevant discovery responses and/or
6 which their experts did not analyze.

7 5. Plaintiffs lack antitrust standing under Associated General Contractors.

8 6. AASI is barred from seeking damages for purchases for which it cannot prove that it
9 paid.

10 IT IS FURTHER STIPULATED among the Parties, and subject to the concurrence of the
11 Court, that the following summary judgment topics identified by Defendants will be in Phase 2:

12 1. Certain of Plaintiffs' state-law claims should be dismissed because the plaintiffs do
13 not satisfy one or more elements of the claim or are not entitled to any available
14 remedy.

15 2. Plaintiffs cannot recover for claims for purchases of STN-LCD panels.

16 3. Plaintiffs' claims against certain Defendants are barred because those Defendants did
17 not participate in a price-fixing conspiracy with respect to small, medium and/or large
18 panels.

19 4. Certain plaintiffs have failed to bring certain claims within the applicable limitations
20 period.

21 5. TracFone cannot recover for damages exceeding the amount of any overcharge.

22 6. TracFone's purchases from LG Electronics should be dismissed.

23 IT IS FURTHER STIPULATED among the Parties, and subject to the concurrence of the
24 Court, that the following summary judgment topics identified by Defendants will be in Phase 3:

25 1. Certain of Plaintiffs' alleged damages are barred because they successfully passed
26 through to their customers any alleged overcharge on purchases of LCD Products.

27 2. Certain alleged co-conspirators did not participate in the price-fixing conspiracy
28 plaintiffs allege and purchases from these entities cannot be included in plaintiffs'

1 damages. Defendants will not raise this motion as to Fujitsu.

2 3. Plaintiffs cannot prove that Toshiba participated in the alleged price-fixing conspiracy
3 or can be held liable for the acts of others, or plaintiffs cannot prove that certain
4 defendants participated in the alleged “crystal conspiracy” or in any “overarching” or
5 multilateral conspiracy comparable to the “crystal conspiracy.”

6 4. Certain plaintiffs’ federal claims are barred because they lack standing pursuant to
7 Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977). This motion is limited to arguments
8 that (1) SB Trust, MARTA, AASI and NECO do not have standing to bring Sherman
9 Act I Clayton Act claims under Illinois Brick, and (2) plaintiffs cannot prove
10 ownership and control over certain entities.

11 5. All of Plaintiffs' claims against the Toshiba entities should be dismissed because they
12 are precluded by the judgment in *Best Buy Co., Inc. v. Toshiba Corp.*, Case No. 12-cv-
13 4114.

14 IT IS FURTHER STIPULATED among the Parties, and subject to the concurrence of the
15 Court, that the following summary judgment topics identified by Plaintiffs will be in Phase 3:

- 16 1. Certain Defendants participated in and/or are liable for the alleged conspiracy.
17 2. Certain of Plaintiffs’ alleged damages are allowable because Plaintiffs purchased LCD
18 Products from certain alleged affiliates of Defendants and co-conspirators, and such
19 alleged affiliates are owned or controlled by a Defendant or co-conspirator.

20 IT IS FURTHER STIPULATED among the Parties that the Parties will conclude
21 negotiations regarding and file stipulations regarding resolution or narrowing of any of the above
22 summary judgment motions no later than February 18, 2014;

23 IT IS FURTHER STIPULATED among the Parties, and subject to the concurrence and
24 availability of the Court, that the following schedule will apply to any *Daubert* motions filed by
25 Defendants as to Plaintiffs’ experts Dr. Bernheim, Dr. Marx, Dr. Fontecchio, and Mr. Stowell:
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Last day to hold depositions of Dr. Bernheim, Dr. Marx, Dr. Fontecchio, and Mr. Stowell	May 5, 2014
Last day to file <i>Daubert</i> motions	May 29, 2014
Last day to file oppositions to <i>Daubert</i> motions	July 10, 2014
Last day to file reply briefs in support of <i>Daubert</i> motions	August 21, 2014
Hearing on <i>Daubert</i> motions	September 5, 2014

IT IS FURTHER STIPULATED among the Parties, and subject to the concurrence and availability of the Court, that the following schedule will apply to any *Daubert* motion as to any Track 2 expert except for Dr. Bernheim, Dr. Marx, Dr. Fontecchio, and Mr. Stowell:

Last day to file <i>Daubert</i> motions	July 29, 2014
Last day to file oppositions to <i>Daubert</i> motions	September 9, 2014
Last day to file reply briefs in support of <i>Daubert</i> motions	October 21, 2014
Hearing on <i>Daubert</i> motions	November 7, 2014

Notwithstanding the schedule above, the Parties agree that any *Daubert* motion that regards any expert appearing only in a single case that will be remanded to a transferor court for trial purposes will be heard by that transferor court.

Dated: January 28, 2014

Respectfully submitted,

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1 Pursuant to General Order No. 45, § X-B, the filer attests that concurrence in the filing of this
2 document has been obtained from each of the above signatories.

3 **IT IS SO ORDERED.**

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6 Dated: 1/28/14



Hon. Susan Illston
United States District Judge

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